foreign government information. Agencies shall review the referred documents and promptly notify the Archivist of the United States of the declassification determination. Forwarded copies of the documents shall be marked to reflect any downgrading or declassification action and shall be returned to the National Archives.

§ 2002.8 Downgrading.

Foreign government information classified ''Top Secret'' may be downgraded to ''Secret'' after 30 years unless the agency with declassification authority over it determines on its own, or after consultation, as appropriate, with the foreign government or international organization of governments which furnished the information, that it requires continued protection at the ''Top Secret'' level.

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

Subpart A—General Provisions

Subpart B—Prescribed Forms

AUTHORITY: Sec. 5.2(b)(7) of E.O. 12356.

Subpart A—General Provisions

§ 2003.1 Purpose.

The purpose of the standard forms prescribed in subpart B is to promote the implementation of the government-wide information security program. Standard forms are prescribed when their use will enhance the protection of national security information and/or will reduce the costs associated with its protection.

[48 FR 40849, Sept. 9, 1983]

§ 2003.2 Scope.

The use of the standard forms prescribed in subpart B is mandatory for all departments, and independent agencies or offices of the executive branch that create and/or handle national security information. As appropriate, these departments, and independent agencies or offices may mandate the use of these forms by their contractors, licensees or grantees who are authorized access to national security information.

[48 FR 40849, Sept. 9, 1983]

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in subpart B may be granted only by the Director of ISOO.

[52 FR 10190, Mar. 30, 1987]

§ 2003.4 Availability.

Agencies may obtain copies of the standard forms prescribed in subpart B by ordering through FEDSTRIP/MILSTRIP or from the General Services Administration (GSA) Customer Supply Centers (CSCs). The national stock number of each form is cited with its description in subpart B.

[50 FR 51826, Dec. 19, 1985]

Subpart B—Prescribed Forms

§ 2003.20 Classified Information Nondisclosure Agreement: SF 312; Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189–A.

(a) SF 312, SF 189, and SF 189–A are nondisclosure agreements between the United States and an individual. The prior execution of at least one of these agreements, as appropriate, by an individual is necessary before the United States Government may grant that individual access to classified information. From the effective date of this rule, September 29, 1988, the SF 312 shall be used in lieu of both the SF 189 and the SF 189–A for this purpose. In any instance in which the language in the SF 312 differs from the language in either the SF 189 or SF 189–A, agency heads shall interpret and enforce the SF 189 or SF 189–A in a manner that is fully consistent with the interpretation and enforcement of the SF 312.

(b) All employees of executive branch departments, and independent agencies or offices, who have not previously signed the SF 189, must sign the SF 312 before being granted access to classified information. An employee who has previously signed the SF 189 is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, who have not previously signed either the SF 189 or the SF 189–A, must sign the SF 312 before being granted access to classified information. An employee who has previously signed either the SF 189 or the SF 189–A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189–A. In these instances, agencies, with the cooperation of the pertinent contractor, licensee or grantee, shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(d) Agencies may require other persons, who are not included under paragraphs (b) or (c) of this section, and who have not previously signed either the SF 189 or the SF 189–A, to execute SF 312 before receiving access to classified information. A person in such circumstances who has previously signed either the SF 189 or the SF 189–A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189–A. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(e) The use of the ''Security Debriefing Acknowledgement'' portion of the SF 312 is optional at the discretion of the implementing agency.

(f) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States, may witness the execution of the SF 312 by another non-Government employee, and may accept it on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 312 by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official or, for non-Government employees only, a designated agent of the United States subsequently accepts by signature the SF 312 on behalf of the United States.

(g) The provisions of the SF 312, the SF 189, and the SF 189–A do not supersede the provisions of section 2302, title 5, United States Code, which pertain to the protected disclosure of information by Government employees, or any other laws of the United States.

(h)(1) *Modification of the SF 189.* The second sentence of paragraph 1 of every executed copy of the SF 189 is clarified to read:

> As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards

for classification and is in the process of a classification determination as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security.

(2) *Scope of ''classified information''.* As used in the SF 312, the SF 189, and the SF 189–A, ''classified information'' is marked or unmarked classified information, including oral communications; and unclassified information that meets the standards for classification and is in the process of a classification determination, as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain information while a classification determination is pending. ''Classified information'' does not include unclassified information that may be subject to possible classification at some future date, but is not currently in the process of a classification determination.

(3) *Basis for liability.* A party to the SF 312, SF 189 or SF 189–A may be liable for disclosing ''classified information'' only if he or she knows or reasonably should know that: (i) The marked or unmarked information is classified, or meets the standards for classification and is in the process of a classification determination; and (ii) his or her action will result, or reasonably could result in the unauthorized disclosure of that information.

In no instance may a party to the SF 312, SF 189 or SF 189–A be liable for violating its nondisclosure provisions by disclosing information when, at the time of the disclosure, there is no basis to suggest, other than pure speculation, that the information is classified or in the process of a classification determination.

(4) *Modification of the SF 312, SF 189 and SF 189–A.*

(i) Each executed copy of the SF 312, SF 189 and SF 189–A, whether executed prior to or after the publication of this rule, is amended to include the following paragraphs 10 and 11.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5 U.S.C. (governing disclosures to Congress); section 1034 of title 10 U.S.C., as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5 U.S.C., as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq.*) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18 U.S.C., and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

11. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this Agreement and its implementing regulation (32 CFR 2003.20) so that I may read them at this time, if I so choose.

(ii) The first sentence of paragraph 7 of each executed copy of the SF 312, SF 189 and SF 189–A, whether executed prior to or after the publication of this rule, is amended to read:

I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law.

The second sentence of paragraph 7 of each executed copy of the SF 312 (September 1988 version), SF 189 and SF 189–A, which reads, ''I do not now, nor will I ever, possess any right, interest, title or claim whatsoever to such information,'' and whether executed prior to or after the publication of this rule, is deleted.

(i) *Points of clarification.* (1) As used in paragraph 3 of SF 189 and SF–189–A, the word ''indirect'' refers to any situation in which the knowing, willful or negligent action of a party to the agreement results in the unauthorized disclosure of classified information even though the party to the agreement does not directly communicate, deliver or transmit classified information to a

person who is not authorized to receive it.

(2) As used in paragraph 7 of SF 189, ''information'' refers to ''classified information,'' exclusively.

(3) As used in the third sentence of paragraph 7 of SF 189 and SF 189–A, the words ''all materials which have, or may have, come into my possession,'' refer to ''all classified materials which have or may come into my possession,'' exclusively.

(j) Each agency must retain its executed copies of the SF 312, SF 189, and SF 189–A in file systems from which an agreement can be expeditiously retrieved in the event that the United States must seek its enforcement or a subsequent employer must confirm its prior execution. The original, or a legally enforceable facsimile that is retained in lieu of the original, such as microfiche, microfilm, computer disk, or electronic storage medium, must be retained for 50 years following its date of execution. For agreements executed by civilian employees of the United States Government, an agency may store the executed copy of the SF 312 and SF 189 in the United States Office of Personnel Management's Official Personnel Folder (OPF) as a long-term (right side) document for that employee. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractors, licensee or grantee shall deliver the original or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189–A of that employee to the Government agency primarily responsible for his or her classified work. A contractor, licensee or grantee of an agency participating in the Defense Industrial Security Program shall deliver the copy or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189–A of a terminated employee to the Defense Industrial Security Clearance Office. Each agency shall inform ISOO of the file systems that it uses to store these agreements for each category of affected individuals.

(k) Only the National Security Council may grant an agency's request for a waiver from the use of the SF 312. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has previously received a waiver from the use of the SF 189 or the SF 189–A need not seek a waiver from the use of the SF 312.

(l) The national stock number for the SF 312 is 7540–01–280–5499.

[53 FR 38279, Sept. 29, 1988, as amended at 56 FR 2645, Jan. 23, 1991; 56 FR 27559, June 14, 1991]

§ 2003.21 Security Container Information: SF 700.

(a) SF 700 provides the names, addresses and telephone numbers of employees who are to be contacted if the security container to which the form pertains is found open and unattended. The form also includes the means to maintain a current record of the security container's combination and provides the envelope to be used to forward this information to the appropriate agency activity or official.

(b) SF 700 shall be used in all situations that call for the use of a security container information form. Agency-wide use of SF 700 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Parts 2 and 2A of each completed copy of SF 700 shall be classified at the highest level of classification of the information authorized for storage in the security container. A new SF 700 must be completed each time the combination to the security container is changed as required by applicable executive order(s), statute(s) or implementing security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 700. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director

will review the request and notify the agency of the decision.

(e) The national stock number for the SF 700 is 7540–01–214–5372.

[50 FR 51826, Dec. 19, 1985]

§ 2003.22 Activity Security Checklist: SF 701.

(a) SF 701 provides a systematic means to make a thorough end-of-day security inspection for a particular work area and to allow for employee accountability in the event that irregularities are discovered.

(b) SF 701 shall be used in all situations that call for the use of an activity security checklist. Agency-wide use of SF 701 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposition of SF 701 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 701. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 701 is 7540–01–213–7899.

[50 FR 51826, Dec. 19, 1985]

§ 2003.23 Security Container Check Sheet: SF 702.

(a) SF 702 provides a record of the names and times that persons have opened, closed or checked a particular container that holds classified information.

(b) SF 702 shall be used in all situations that call for the use of a security container check sheet. Agency-wide use of SF 702 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposal of SF 702 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 702. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 702 is 7540–01–213–7900.

[50 FR 51826, Dec. 19, 1985]

§ 2003.24 TOP SECRET Cover Sheet: SF 703.

(a) SF 703 serves as a shield to protect TOP SECRET classified information from inadvertent disclosure and to alert observers that TOP SECRET information is attached to it.

(b) SF 703 shall be use in all situations that call for the use of a TOP SECRET cover sheet. Agency-wide use of SF 703 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 703 is affixed to the top of the TOP SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 703 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 703. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 703 is 7540–01–213–7901.

[50 FR 51826, Dec. 19, 1985]

§ 2003.25 SECRET Cover Sheet: SF 704.

(a) SF 704 serves as a shield to protect SECRET classified information from inadvertent disclosure and to alert observers that SECRET information is attached to it.

(b) SF 704 shall be use in all situations that call for the use of a SECRET cover sheet. Agency-wide use of SF 704 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 704 is affixed to the top of the SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 704 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 704. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 704 is 7540–01–213–7902.

[50 FR 51827, Dec. 19, 1985]

§ 2003.26 CONFIDENTIAL Cover Sheet: SF 705.

(a) SF 705 serves as a shield to protect CONFIDENTIAL classified information from inadvertent disclosure and to alert observers that CONFIDENTIAL information is attached to it.

(b) SF 705 shall be use in all situations that call for the use of a CONFIDENTIAL cover sheet. Agency-wide use of SF 705 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 705 is affixed to the top of the CONFIDENTIAL document and remains attached until the document is destroyed. At the time of destruction, SF 705 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 705. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 705 is 7540–01–213–7903.

[50 FR 51827, Dec. 19, 1985]

§ 2003.27 TOP SECRET Label SF 706.

(a) SF 706 is used to identify and protect automatic data processing (ADP) media and other media that contain TOP SECRET information. SF 706 is used instead of the SF 703 for media other than documents.

(b) SF 706 shall be used in all situations that call for the use of a TOP SECRET Label. Agency-wide use of SF 706 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 706 is affixed to the medium containing TOP SECRET information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 706. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 706 is 7540–01–207–5536.

[52 FR 10190, Mar. 30, 1987]

§ 2003.28 SECRET Label SF 707.

(a) SF 707 is used to identify and protect automatic data processing (ADP) media and other media that contain SECRET information. SF 707 is used instead of the SF 704 for media other than documents.

(b) SF 707 shall be used in all situations that call for the use of a SECRET Label. Agency-wide use of SF 707 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 707 is affixed to the medium containing SECRET information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 707. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 707 is 7540–01–207–5537.

[52 FR 10190, Mar. 30, 1987]

§ 2003.29 CONFIDENTIAL Label SF 708.

(a) SF 708 is used to identify and protect automatic data processing (ADP) media and other media that contain CONFIDENTIAL information. SF 708 is used instead of the SF 705 for media other than documents.

(b) SF 708 shall be used in all situations that call for the use of a CONFIDENTIAL Label. Agency-wide use of SF 708 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 708 is affixed to the medium containing CONFIDENTIAL information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 708. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 708 is 7540–01–207–5538.

[52 FR 10190, Mar. 30, 1987]

§ 2003.30 CLASSIFIED Label SF 709.

(a) SF 709 is used to identify and protect automatic data processing (ADP) media and other media that contain classified information pending a determination by the classifier of the specific classification level of the information.

(b) SF 709 shall be used in all situations that require the use of a CLASSIFIED Label. Agency-wide use of SF 709 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 709 is affixed to the medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed. When a classifier has made a determination of the spedific level of classification of the information contained on the medium, either SF 706, SF 707, or SF 708 shall be affixed on top of SF 709 so that only the SF 706, SF 707, or SF 708 is visible.

(d) Only the Director of ISOO may grant a waiver from the use of SF 709. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 709 is 7540–01–207–5540.

[52 FR 10190, Mar. 30, 1987]

§ 2003.31 UNCLASSIFIED Label SF 710.

(a) In a mixed environment in which classified and unclassified information are being processed or stored, SF 710 is used to identify automatic data processing (ADP) media and other media that contain unclassified information. Its function is to aid in distinguishing among those media that contain either classified or unclassified information in a mixed environment.

(b) SF 710 shall be used in all situations that require the use of an UNCLASSIFIED Label. Agency-wide use of SF 710 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 710 is affixed to the medium containing unclassified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed. However, the label is small enough so that it can be wholly covered by a SF 706, SF 707, SF 708 or SF 709 if the medium subsequently contains classified information.

(d) Only the Director of ISOO may grant a waiver from the use of SF 710. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 710 is 7540–01–207–5539.

[52 FR 10191, Mar. 30, 1987]

§ 2003.32 DATA DESCRIPTOR Label SF 711.

(a) SF 711 is used to identify additional safeguarding controls that pertain to classified information that is stored or contained on automatic data processing (ADP) or other media.

(b) SF 711 shall be used in all situations that require the use of a DATA DESCRIPTOR Label. Agency-wide use of SF 711 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 711 is affixed to the ADP medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. SF 711 is ordinarily used in conjunction with the SF 706, SF 707, SF 708 or SF 709, as appropriate. Once the Label has been applied, it cannot be removed. The SF 711 provides spaces for information that should be completed as required.

(d) Only the Director of ISOO may grant a waiver from the use of SF 711. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 711 is 7540–01–207–5541.

[52 FR 10191, Mar. 30, 1987]

PART 2004—DIRECTIVE ON SAFEGUARDING CLASSIFIED NATIONAL SECURITY INFORMATION

Sec.

AUTHORITY: E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

SOURCE: 64 FR 51854, Sept. 24, 1999, unless otherwise noted.

§ 2004.1 Authority.

This Directive is issued pursuant to Section 5.2 (c) of Executive Order (E.O.) 12958, ''Classified National Security Information.'' The E.O. and this Directive set forth the requirements for the safeguarding of classified national security information (hereinafter classified information) and are applicable to all U.S. Government agencies.

§ 2004.2 General.

(a) Classified information, regardless of its form, shall be afforded a level of protection against loss or unauthorized disclosure commensurate with its level of classification.

(b) Except for NATO and other foreign government information, agency heads or their designee(s) (hereinafter referred to as agency heads) may adopt alternative measures, using risk management principles, to protect against loss or unauthorized disclosure when necessary to meet operational requirements. When alternative measures are used for other than temporary, unique situations, the alternative measures shall be documented and provided to the Director, Information Security Oversight Office (ISOO), to facilitate that office's oversight responsibility. Upon request, the description shall be provided to any other agency with which classified information or secure facilities are shared. In all cases, the alternative measures shall provide protection sufficient to reasonably deter and detect loss or unauthorized disclosure. Risk management factors considered will include sensitivity, value and crucial nature of the information; analysis of known and anticipated threats; vulnerability; and countermeasures benefits versus cost.

(c) NATO classified information shall be safeguarded in compliance with U.S.